

# The Assassination Plan is Reviewed from a Legal Aspect of Pathology

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**Abstract:** *The purpose of this study is to know and analyze cases of premeditated murder in terms of legal pathology aspects and to analyze factors affecting premeditated murder from legal pathology aspects. The cases of premeditated murder are the legal effect of the legal pathology itself. The occurrence of legal pathology can be known by using the legal system approach. The occurrence of damage to the legal system began aspects of legal substance, legal structure, legal culture.*

**Keywords:** The Assassination, Legal Aspect Of Pathology

## 1. Introduction

In the course of time society adapts to changes, legal legal problems arise as a result of social interaction between individuals and individuals, between individuals and groups, or between groups and groups. Social problems are defined as a condition that is not expected and considered to be detrimental to social life as well as contrary to agreed social standards.

In defining the social problem there are 2 definitions that are according to the general and according to the experts. According to the public or the public that the social problem is "all things concerning the public interest" whereas according to the experts the social problem is "a condition or development manifested in a society based on their study, which possesses qualities that can cause chaos to life citizens as a whole.

From both the above definitions can be concluded that the social problem is a mismatch between the elements of culture or society, which endanger the lives of social groups, or inhibit the fulfillment of the basic wishes of the citizens of social groups, thus causing non-conformity of social ties. Suryono Soekanto (1998: 399).

Planned or intentional killing, in some media it is mentioned that the percentage in America and Europe is 81%, while Asia is 48% (CNN, 2014). In Indonesia Murder or killing is an act that is contrary to the written law and has been regulated in the Criminal Code of Chapter XIX is about the crime of life. According to (Chazawi, 2001: 56-57), murder is a crime against life "deliberately" and resulted in the loss of the lives of others. Basically murder is a manifestation of crime against life. Crime against life is an attack on the lives of others. The object of this crime is human life. This murder has 3 conditions that must be met that is the existence of deeds, a death of another person and the causal relationship between deeds with the consequences of death or loss of life of others. Lamintang and Theo Lamintang (2014: 1) said that in order to eliminate the life of another person, the perpetrator must do something or a series of actions that result in the death of another person with the note that the oppet or deliberate act committed by the perpetrator is intended to kill. This act consists of: a. ordinary killings in basic form (doodlag); b. killing

followed, accompanied or preceded by other criminal offenses; c. Murder planning (moord); d. mother's killing of her baby at or shortly after birth (Chazawi, 2001: 56).

Referring to the 1945 Constitution, article 28I paragraph 1, states: "The right to life, the right not to be tortured, the right of freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law is a human right which can not be reduced under any circumstances".

According to JJ. Rosseou That the existence of the norm is a logical implication because of social problems. Kartini kartono (2011: 45) describes several factors behind the formation of social problems caused by the interests that are the basis of the emergence of the behavior of individuals, individuals behave because there is an incentive to meet their interests, this interest is essential for the individual's survival alone, if the individual succeeds in fulfilling his interests then he will feel satisfied, and otherwise failure in memnuhi this interest will cause many problems both for himself and for the surrounding environment. Different environments will enable the emergence of individual differences in interests.

Besides the problems that implicate the occurrence of legal pathology is prejudice and discrimination is an action that can harm the growth, development of society. Prejudice has a personal basis in which everyone has it. Prejudices are of a good nature and some are of a bad nature, which can cause social problems here is a bad prejudice. Prejudice can be interpreted as an overly hasty posture, based on too rapid generalization, and accompanied by simplification of a reality. In everyday life, this prejudice is influenced by many emotions, so if the prejudice is accompanied by hostility all can not be channeled naturally so that it can lead to misunderstandings and hostilities, resulting in social problems arise.

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## 2. Theoretical Framework

### Social Contract Theory

Hobbes's thought regarded the state as Leviathan. Leviathan is defined as the ferocious, frightening and cruel monsters in the old covenant story. This creature is not only feared but also his command is always obeyed. His ability to threaten the existence of other beings.

State power creates fear for its people who violate the law. If a citizen violates the law, the Leviathan state does not hesitate to impose the death penalty. The state is positioned as an institution with unlimited power. The state can decide decisions without considering other interests. For Hobbes, a country with unlimited power is the best country.

The social contract born of Hobbesian thought was driven by the socio-historical conditions experienced by Hobbes. The state of war and non-peace at the time was the cause of Hobbes's emergence for a state of absolute power capable of controlling the unrest. To be more clear, the author will divide the flow of Hobbes's social contract of thought and Hobbes's view of the state. In addition, the author will look at the context of state power in Indonesia by looking at the social contract point of view delivered by Hobbes.

B Hobbes's various works are immense and fascinating. Starting from the reflection of philosophical problems, epistemology, mathematics, geometry, and physics to the work of ethics, political philosophy and analysis of the civil war that hit Britain at that time. Like Rene Descartes, Hobbes also criticized and surpassed the scholastic philosophy that dominated all medieval and early-age philosophy. Both construct philosophical arguments on the basis of human reason and abandon the authoritative arguments as developed by Plato, Aristotle, Augustine, and Thomas Aquinas, Otto Gusti Madung (2013: 29-30).

Compared to Descartes, Thomas Hobbes is still much more radical in arguing and defending philosophical autonomy against theology. If Descartes's theory of knowledge still rests on the existence of God as the ultimate basis for certainty and truth, Hobbes's political philosophy may be seen as the first systematic design of secular political philosophy. The procedure of individualistic argumentation and solely based on the pure intellect of humanity led to the political philosophy of Hobbes leaving aristotelianism and the concept of medieval cosmological and theological order, Otto Gusti Madung (2013: 30)..

The various socio-historical conditions experienced by Hobbes convey Hobbes's idea of the State and the Power. Hobbes's view of the state as the figure of the Leviathan, the dreaded monster, is the result of a reflection of Hobbes's life. The existence of the state of nature (human nature), the conflict of power between the king, the church and the parliament, and the destruction of the state order at that time requires an unlimited power that can maintain the political stability of the Ruler. This will then be the next author of

Hobbes's idea of the natural state of man and of how the state can be formed by the existence of a social contract.

Hobbes's view is that every human being has the right to use his logic in fulfilling his own needs. Hobbes's idea of the use of reason is influenced by the important character Francis Bacon. His friendship with this English empirical figure awakened Hobbes to the importance of the use of reason and experimental methods in the world of science. Hobbes has also been influenced by the political notion of Baconian authoritarianism, Ahmad Suhelmi (2001: 169) The basic principle of the rule which is the product of the ability to cultivate the natural state of experience is the conditional peace rule: "Everyone makes peace as long as there is hope. If peace can no longer be created, he may take up arms, use force or fight." Thomas Hobbes (1966: 99).

This rule does not provide solutions how to create peace. Everyone has the basic right of each to be anything according to his will. In the end only explains the cause as a general consequence factor of war. This condition is based on Hobbes's view which assumes every human competes to use his own efforts to gain happiness through his intellect. This competition can end in happiness for the victor and the suffering of the losers. Those who lose will be eliminated and the victorious will rule.

In this case Hobbes asserts that the rivalry of natural stimuli to use power in man. In the face of competition, human beings are encouraged to use the power that exists on it. The tendency is stronger considering that humans are essentially power hunters. Based on that assumption, Hobbes argues that human life will always be colored by competition and power conflict, Michael Lessnoff (1986: 50). In this condition violence becomes the main weapon in doing the competition. Until Hobbes then considers naturally to fight each other humans. Humans will become wolves to other humans (*homo homini lupus*). All human beings will fight against all (*bellum omnium contra omnes*).

The second natural obligation (*lex naturalist*) explains that: "Everyone must voluntarily give up his rights to all (*ius omnium in omnia*), on the condition that others are willing to cooperate, insofar as they are necessary for the sake of peace and the purpose of survival; he must create free space for others as others also allow freedom for him, Thomas Hobbes (1966: 100). This rule was born out of Hobbes's mind of a war defined as *bellum omni contra omni*. Warfare as a result of competition between people who have the right absolutely. Basically if all human beings assume that their life can not be disturbed by other human, then conflict and war between all human also will not be resolved. For that to do is keep the distance from all other humans. The condition of mutual distance between humans will only be created if there is intermittance. Thus an imbalance that can harm peace can be avoided.

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In the writings of Michael Lessnoff (1986: 56) quotes: "I authorize and surrender my right to self-regulation to this person or to this group of people, on this condition that you waive your rights to him and authorize all his actions in the same manner."

According to Hobbes the state must be absolute. His power should be centered on one person. The divided power will only lead to conflict, anarchy, civil war within the state. The ruler must have complete power to maintain stability and keep the built social contracts not violated by humans. Hobbes does not deny that absolute power in one person will produce despotic power. However, for Hobbes a despotic state is better than the conflict that will occur when the state power is divided. Even to the turn of the ruler should be left to the ruler himself. This will ensure the continuation of coexistence that has been established with the agreement, Deliar Noer (1982: 81).

The social contract of Thomas Hobbes explains that Hobbes's best rule is absolute. Absolute monarchy gives unlimited power to the ruler to play an important role in managing the stability of the state in accordance with the will of the authorities. Hobbes believes that the power held by one person will be more easily repaired if damaged than the power held by many people. To control the noise and conflict that occurs in a country requires absolute power that can decide what to do. Hobbes's conception of sovereignty recognizes a relatively private area of activity free from state intervention. These areas of individual freedom include the right to "buy and sell, and enter into contracts with others, choose a place of residence, income, way of life, and send their children to a place they consider appropriate, Hobbes in Henry J. Schomandte (2009: 321) .

### Utility Theory Jeremy Bentham

Utilitarianism was born as a mature form of moral and political philosophy by Jeremy Bentham (1748-1832). This idea is present to criticize the natural law tradition that flew in Great Britain at that time, Ian Shapiro (2006: 14-15). Natural law is a legal system that refers to rules that are deemed to be from God and other metaphysical things which, according to Bentham, their legal products contradict human empirical needs.

According to Bentham, man is essentially led by two sovereign rulers: pleasure and pain, Jeremy Bentham (2000: 14). Humans always avoid suffering and continue to pursue pleasure. That is the human empirical need. Morality and the law must be based on that fact. Therefore, moral and legal

products must have the goal of maximizing human enjoyment and happiness extensively. Moral and political philosophy of utilitarianism does not rest on the existence of gods, spirits and other metaphysical things. Human needs are the center of consideration of the formation of law and morality. This secularity, to Kymlicka, becomes one of two kinds of appeals of utilitarianism, Will Kymlicka (1990: 10).

Joh Stuart Mill (1806-1873) a Bentham disciple, agreed that humans are basically pursuing happiness. Yet he criticizes his predecessor's opinion which tends to measure the pleasures that humanity requires by quantitative means, K. Bertens (2000: 248-249). According to Mill, the quality of pleasure and happiness must also be considered, because there is happiness of higher quality and lower, John Stuart Mill (2009: 18-19).

Although Mill criticizes Bentham, the principles of moral doctrine and law for both are hedonistic, though not hedonistic selfish, because for them the principle of utilitarianism is the greatest happiness of the greatest number. Individuals in achieving fun need to consider the conditions of others and the wider community. But still, they make happiness as a moral peak, while other kinds of goodness are just a means to achieve that pleasure.

Action, in utilitarianism, is assumed to be true if it produces the greater the quantity of pleasure, and the more people are able to enjoy the pleasure. So in this sense the form of actions, norms and legal products, if the consequences meet the rules, will be judged right, and judged bad if it does not meet the rule. This is what Kymlicka says of the consequentialism in utilitarianism, Peter Singer (1993: 3). becomes important and becomes the second attraction of two kinds of appeal of utilitarianism,

Besides having two attractions, secularism and consequentialism; utilitarianism according to Amartya Sen (2001: 58-59) has another important characteristic, namely, welfarism. Welfarism in this utilitarian view limits the state's decisions of the state into the general goodness of the state. In addition, utilitarianism has another important characteristic of 'sum ranking', which in utilitarianism requires the summing up of different degrees of utility of society to produce the highest degree of happiness.

Although utilitarianism has some charms that make an important contribution to moral philosophy, but when utilitarianism as a political philosophy which forms the basis for individualistic political decision-making as well as the basis for social or state institutions to spawn law and regulation, utilitarianism teaches impressed can not accepted by common sense (intuition) and the principle of justice because it drowns individual rights for the happiness of society at large.

There are two important things that need to be addressed in the discussion of utilitarianism as the entry point for the discussion of rights and justice in utilitarianism. That is utility meaning contained in utilitarianism. And second, is how utilitarians apply the utilitarian doctrines in the political sphere. In this second discussion, then followed by criticisms of the utilitarian thinker, who later on this

occasion, the author felt it necessary to provide arguments and responses to criticism directed at utilitarianism, especially regarding rights and justice.

### 3. Theory of Social Change

Social change is a process of a process in a social system that appears in the form of differences that can be measured and occur within a certain period of time. For example the husband in a traditional family has a very decisive role. If the husband does not work, family life will fall apart. Not so with a modern family where many wives are involved in making a living for the family. While the husband is not always a determinant in the family. It does not always have a dominant role. So, it can be said that in a certain period of time there has been a social change. Socio-cultural changes in society are many forms, including changes in norms, values, patterns of behavior, equipment of life, views of life, and so on.

Social change in the above example is a change that concerns social structure and patterns of social relations. The changes include changes in status systems, family relationships, political systems, power, and population dispersal.

Many social experts give meaning or meaning to social change differently. Robert Morrisom Maciver, for example, argues that social change is a change in the field of social relations or changes to balance in such social relations. Social relations here are meant as relations between individuals with society and between groups of one with other social groups within a society. for example 20 years ago people in village A were farmers. Relationships among members of the community are familial and full of spirit gotong royong. But village A has now turned into an industrial area. Relationships among members of society are instrumental, meaning that people connect with others as far as others give him economic benefits. Then there is the relationship between individuals with society and social groups that one with the other changes. No longer equality and harmony in social relations, because of differences in economic status, social standing, and so forth. This is what Maciver calls social change.

Meanwhile, Selo Soemardjan (Agung S.S. Raharjo, 2009: 63) understands that social change takes place in all human events, both in terms of values that are the standard of life and human behavior itself. In other words, a change in the social institutions of a society that affect the system. Examples are changes in the means of transportation. Now people travel by bus, taxi, motorbike, car, or angkot. A few decades ago, people were still using the gig. These social changes simultaneously affect the change in values and behavior, Ratna Sukmayani et al (2008: 86).

Found in other literature about the concept of social change, ie social change as a concept has other roots than the concept of development, Saparinah Sadli (1997: 243). In analyzing the development of society and social change that occurs, it is important to see changes in the economic system, especially in the production system. However, in the analysis of profound social change it is necessary to examine

more than merely look at forms of production. Various factors need to be seen as an important component in the analysis, Saparinah Sadli (1997: 245).a) Different level of analysis, but interrelatedb) Internal and external factors in the community concernedc) Caused) Actors of changee) The nature of change (gradually, radically)

Changes can also occur because of cultural imitation process. The younger generation imitates what is in the culture of the older generation. Because this process of imitation is only done through the process of imitating the forms that are considered necessary, the resulting form of culture is only slightly different from the previous culture. In this case, there are changes that occur slowly but surely. The change can only be known after a long period of time in the form of an imperfect cultural heritage process. In that event there are elements of culture that are not inherited. These elements usually contain things that are deemed to have no significance to the generation of their heirs.

The consequences of social change are not always the same. There are social changes that have little impact and less meaning. An example is a change in fashion or hair. This field of change has no political influence. There are also social changes that have a big impact. An example is the industrial revolution. The industrial revolution in addition to changing the way of producing industrial goods, also changed the joints of people's lives. The industrial revolution also gave rise to modern imperialism.

There are two factors that cause social change, namely internal and external factors. Sources of change come from the community itself. It can be said as an interm factor. For example, the contradiction between groups within society itself, demography, new discoveries, and others. There are also those from outside, this is called the eksterm factor. Contonya, the influence of other people's culture, natural factors, and so on, Ratna Sukmayani et al (2008: 5).

The characteristics of social change that occur in society are as follows:

- a) Every society changes, either slowly or quickly so that no society stops its development.
- b) Changes that occur in a social institution will be followed by changes in other social institutions. This is because social institutions are independent of mutual influence, making it very difficult to isolate changes to certain social institutions.
- c) Rapid social change usually leads to temporary disorganization because it is in the process of adjustment. Such coordination will continue with a reorganization that will lead to new rules and values.
- d) Social change takes place in the material or immaterial plane because both have mutuality.
- e) Typologically, social change can be categorized in several forms, namely:
  - The social process, that is the turn of the various awards, facilities, and members of a structure.
  - Segmentation or division, ie the expansion of structural units that are not too different from the units that already exist.
  - Structural changes, new roles and organization arise.

- Changes in group structure, ie change of group composition, group awareness level, and intergroup relationships in society, Janu Murdiatmoko (2009: 5).

#### 4. Discussion

##### Crime Against Life

The crime against life (misdrifven tegen bet leven) is in the form of an attack on the lives of others. On the basis of his mistakes the crime of life is divided into two namely: 1. The deliberate crime of life (dolus misdrifven), is contained in Chapter XIX of the Criminal Code, articles 338 to 350: 1. Ordinary killings in the form of principal (doodslag, 338 of the Criminal Code) 2. The killing followed, accompanied or preceded by other offenses (339 of the Criminal Code) 3. Plagiarism (moord, 340 of the Criminal Code) 4. Mother's killing of the baby at or shortly after birth (341, 342, and 343 of the Criminal Code) 5. Murder at the request of the victim (344 of the Criminal Code) 6. Advocacy and suicide help (345 of the Criminal Code) 7. Abortion and murder of the womb (346, 347, 348, and 349 of the Criminal Code).

The deliberate crime of life (murder) in the main form, is contained in article 338 which in its formula reads: "Whoever intentionally removes the life of another person in crime for murder with a maximum imprisonment of 15 years". In this article there are elements that are objective and subjective, if detailed as follows: 1. Objective element: - Actions: eliminate lives - Objective: his other people 2. Subjective element: - With the subjective: In the act of eliminating the life (others) there are 3 conditions that must be obeyed, namely: 1. The existence of a form of deeds; 2. The existence of a death (others); 3. The existence of a causal relationship (casual verband) between the deed and the consequences of death (others). Between the subjective elements deliberately with the act of eliminating there are conditions that must also be proven, is the implementation of the act of eliminating the life (others) must not long after the emergence of the will (intention) to eliminate the life of others.

The intended killing is as defined in article 339, which reads: "Murder which is followed, accompanied or preceded by a criminal offense. Which is executed with the intention of preparing or facilitating its execution, or to avoid self or other participants from criminal in the case of being caught, or to ensure the acquisition of objects obtained unlawfully, criminal by imprisonment for life or temporary, maximum 20 years .

If the formula is elaborated, it consists of the following elements: - All elements of murder (objective and subjective) in article 338: which (1) is bound, (2) is accompanied, or (3) preceded by other crimes. The murder was committed with the intent of: 2. To prepare for other crimes. 3. To facilitate the implementation of other criminal acts. 4. In the event of being caught red-handed is intended to avoid self or other participants of the criminal, or to ensure the acquisition of objects obtained unlawfully from other offenses.

Crime Section 339, its principal crime is murder, a special form of murder which is exacerbated on all the elements caused in items b and c. In these two points are placed

criminal incriminating properties in the form of this particular killing. In this murderous murder, in fact, two criminal offenses are committed, one being ordinary murder in the form of principal (338) and other crimes (other than murder). If the murder has occurred, but this other crime he has not occurred, such as killing to prepare the theft where the theft has not occurred, then the crime does not occur.

##### Murder Planning (Moord)

The premeditated murder or abbreviated to premeditated murder, is the most serious murder of the criminal threat of all forms of crime against human life, it is regulated in Article 340 of the Criminal Code which reads: "Whoever intentionally and with the plan first remove the life of another person , sentenced for murder by plan, by death penalty or life imprisonment or for a certain period of time, maximum of 20 years ". From that chapter, premeditated murder consists of elements: 1. Subjective element: - Deliberately; And, - with a plan first 2. Objective Elements - Actions: eliminate lives - Object: the lives of others. The premeditated murder consists of murder in the sense of section 328 plus the element with the plan in advance. Compared to the killings in 338 and 339 were placed on the element with the plan first.

Understanding with the plan in advance according to M.V.T. the establishment of chapter 340, among others: "With a plan first" is necessary when thinking quietly and think calmly. For that is enough if the perpetrator to think briefly before or at the time he will commit a crime so he realized what he did ". Planned in advance means that there is a period of time, how short to consider, and to think calmly. Regarding the element with the plan in advance, basically contains 3 terms or elements, namely:

- 1) Decide the will in a calm atmosphere
- 2) There is sufficient time available from the beginning of the will to the execution of the will.
- 3) Implementation of the will (deeds) in a calm atmosphere.

Deciding the will in a quiet atmosphere, is when deciding the will to kill it is done in a calm inner atmosphere. A quiet inner calm is a hasty or abrupt atmosphere, not in a state of necessity and high emotion. There is a considerable grace period between the inception or the decision of the will until the execution of the decision of his will. This sufficient time is relative, in the sense of being not measured from the length of time, but rather of the concrete circumstances or events.

Regarding the third condition, the execution of the murder was committed in an inner calm, even this third condition was recognized by many as the most important. It means that the mood in carrying out the murder is not in a hurry, high temper, excessive fear and so on. The three elements or conditions with the foregoing plan as described above are cumulative and interconnected, an indivisible integrality. Because when it is separated or disconnected, it is no longer with the plan first. Section 340 is a murder chapter with a criminal offense in which premeditated murder has been planned in advance.

## 5. Conclusion

- 1) Criminal acts committed in the form of plotting against the compounds of people undertaken on a planned basis is a deviant activity or legal pathology because someone who commits a criminal act is a person who opposes or antisocial (antisocial). Thus, his attitude or behavior is not in accordance with the norms prevailing in society.
- 2) Murder or killing is an act that is contrary to the written law and has been regulated in the Criminal Code of Chapter XIX concerning the crime of life.

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